



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1056]

Certain Collapsible Sockets for Mobile Electronic Devices and Components Thereof; Commission Determination to Review an Initial Determination in Part; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part the presiding administrative law judge's initial determination (Order No. 11) granting summary determination that the defaulting respondents have violated section 337 in the above-captioned investigation. The Commission requests certain briefing from the parties on the issues under review, as indicated in this notice. The Commission also requests briefing from the parties and interested persons on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Lucy Grace D. Noyola, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202-205-3438. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<https://www.usitc.gov>). The

public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 15, 2017, based on a complaint filed on behalf of PopSockets LLC of Boulder, Colorado ("PopSockets" or "Complainant"). 82 FR 22348-49 (May 15, 2017). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain collapsible sockets for mobile electronic devices and components thereof by reason of infringement of U.S. Patent No. 8,560,031 ("the '031 patent"). *Id.* The notice of investigation named as respondents Agomax Group Ltd. of Kowloon, Hong Kong; Hangzhou Hangkai Technology Co., Ltd. of Zhejiang, China; Yiwu Wentou Import & Export Co., Ltd. of Zhejiang, China; Shenzhen Enruize Technology Co., Ltd. of Shenzhen, China; and Guangzhou Xi Xun Electronics Co., Ltd.; Shenzhen Chuanghui Industry Co., Ltd. of Guangdong, China; Shenzhen VVI Electronic Limited; Shenzhen Yright Technology Co., Ltd.; Shenzhen Kinsen Technology Co., Limited; Shenzhen Showerstar Industrial Co., Ltd.; Shenzhen Lamye Technology Co., Ltd.; Jiangmen Besnovo Electronics Co., Ltd.; Shenzhen Belking Electronic Co., Ltd.; Shenzhen CEX Electronic Co., Limited, all of Guangdong, China. *Id.* The Office of Unfair Import Investigations ("OUII") also was named as a party in the investigation. On August 22, 2017, the Commission found the following thirteen respondents in default: Agomax Group Ltd.; Yiwu Wentou Import & Export Co., Ltd.; Hangzhou Hangkai Technology Co., Ltd.; Shenzhen Enruize Technology Co., Ltd.; Guangzhou Xi Xun Electronics Co., Ltd.; Shenzhen VVI Electronic Limited; Shenzhen Yright Technology Co., Ltd.; Shenzhen Kinsen

Technology Co., Limited; Shenzhen Showerstar Industrial Co., Ltd.; Shenzhen Lamye Technology Co., Ltd.; Jiangmen Besnovo Electronics Co., Ltd.; Shenzhen Belking Electronic Co., Ltd.; and Shenzhen CEX Electronic Co., Limited (collectively, “defaulting respondents”). Notice (Aug. 22, 2017) (determining not to review Order No. 9 (Aug. 4, 2017)).

On September 18, 2017, the Commission terminated Shenzhen Chuanghui Industry Co., Ltd. based on withdrawal of the complaint as to that respondent. Notice (Sept. 18, 2017) (determining not to review Order No. 10 (Aug. 28, 2017)).

On August 8, 2017, PopSockets filed a motion for summary determination that (1) the defaulting respondents have sold for importation into the United States, imported into the United States, or sold after importation certain collapsible sockets for mobile electronic devices and components thereof that allegedly infringe certain claims of the '031 patent in violation of section 337; (2) the accused products infringe the asserted claims of the '031 patent; and (3) a domestic industry with respect to the '031 patent exists. The motion also requested a recommendation for entry of a general exclusion order and a bonding requirement pending Presidential review. On August 31, 2017, OUII filed a response supporting the motion in substantial part and supporting the requested remedy of a general exclusion order.

On February 1, 2018, the administrative law judge (“ALJ”) issued an initial determination (“ID”) (Order No. 11), granting PopSockets’ motion for summary determination of a section 337 violation. The ID found that the defaulting respondents’ accused products infringe one or more of claims 9-12 of the '031 patent, but found no infringement of claims 16 and 17 of the '031 patent. The ID found that the defaulting respondents’ accused products have been imported into the United States and that a domestic industry exists in the United States with respect to the '031 patent. The ALJ also issued a Recommended Determination on Remedy and Bonding,

recommending that, if the Commission finds a section 337 violation, the Commission issue a general exclusion order and impose a bond of 100 percent during the period of Presidential review. No petitions for review of the ID were filed.

Having examined the record of this investigation, including the ID, the Commission has determined to review in part the ALJ's determination of a section 337 violation. Specifically, the Commission has determined to review (1) the ID's findings on the technical prong of the domestic industry requirement to correct a typographical error, namely, to modify a citation to "Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 77 (Infringement Analysis and Chart)" at page 107 of the ID to "Mem. Ex. 2 (Kemnitzer Decl.) at ¶ 61 (Analysis and Chart)" and (2) the ID's findings on the economic prong of the domestic industry requirement. The Commission has determined not to review the remaining issues decided in the ID.

In connection with its review, the Commission requests responses to the following questions. The parties are requested to brief their positions with reference to the applicable law and the record.

1. Please describe the nature and significance of PopSockets' alleged domestic industry investments, *i.e.*, in the context of PopSockets' operations, marketplace, or industry, and whether PopSockets' activities have a direct bearing on the practice of the '031 patent. As part of your response, please describe in detail PopSockets' activities in engineering, research, development, operations, marketing, sales, service, and assembly and what amount or portion of the total alleged investment under each of 19 U.S.C. § 1337(a)(3)(A), (B), and (C) is allocable to each activity.
2. Please provide a basis for crediting any investments that occurred after the filing date of the complaint towards the domestic industry requirement.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue a cease and desist order that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles.

Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (Dec. 1994), Comm'n Opinion. In particular, the written submissions should address any request for a cease and desist order in the context of recent Commission opinions, including those in *Certain Arrowheads with Deploying Blades and Components Thereof and Packaging Therefor*, Inv. No. 337-TA-977, Comm'n Op. (Apr. 28, 2017) and *Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same*, Inv. No. 337-TA-959, Comm'n Op. (Feb. 13, 2017). Specifically, if Complainant seeks a cease and desist order against a defaulting respondent, the written submissions should respond to the following requests:

1. Please identify with citations to the record any information regarding commercially significant inventory in the United States as to each respondent against whom a cease and desist order is sought. If Complainant also relies on other significant domestic operations that could undercut the remedy provided by an exclusion order, please identify with citations to the record such information as to each respondent against whom a cease and desist order is sought.

2. In relation to the infringing products, please identify any information in the record, including allegations in the pleadings, that addresses the existence of any domestic inventory, any domestic operations, or any sales-related activity directed at the United States for each respondent against whom a cease and desist order is sought.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on all of the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant is also requested to submit

proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the asserted patents expire and the HTSUS numbers under which the accused products are imported, and provide identification information for all known importers of the subject articles. Initial written submissions and proposed remedial orders must be filed no later than close of business on **Monday, April 2, 2018**. Reply submissions must be filed no later than the close of business on **Monday, April 9, 2018**. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number (Inv. No. 337-TA-1056) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary at (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal

investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,¹ solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 C.F.R. part 210).

By order of the Commission.

Issued: March 19, 2018.

Lisa R. Barton,

Secretary to the Commission.

¹ All contract personnel will sign appropriate nondisclosure agreements.

[FR Doc. 2018-05906 Filed: 3/22/2018 8:45 am; Publication Date: 3/23/2018]